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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,562	09/27/2000	Thomas G. Woolston	032997-036	7517
20985	7590	01/05/2005	EXAMINER	
FISH & RICHARDSON, PC 12390 EL CAMINO REAL SAN DIEGO, CA 92130-2081			ART UNIT	PAPER NUMBER

DATE MAILED: 01/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT

PAPER

20041217

DATE MAILED:

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Commissioner for Patents

In response to applicant's RCE and amendment, filed 9/23/04.

MPEP 819 Office Generally DoesNot Permit Shift

The general policy of the Office is not to permit the applicant to shift to claiming another invention after an election is once made and action given on the elected subject matter. Note that the applicant cannot, as a matter of right, file a request for continued examination (RCE) to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined (i.e., applicant cannot switch inventions by way of an RCE as a matter of right). When claims are presented which the examiner holds are drawn to an invention other than the one elected, he or she should treat the claims as outlined in MPEP § 821.03.

Newly submitted claims 18-34 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Newly submitted claims are grouped as follows:

- I. Claim 18, drawn to an apparatus for facilitating internet-base electronic auctions with a specific user interface.
- II. Claims 19-22, drawn to a method for a computer application program operated by a remote participant seller.
- III. Claims 23-26, drawn to an independently operated apparatus for an independent seller to schedule and manage a sale of an item with a specific user interface.
- IV. Claims 27-34, drawn to an article comprising a computer application program with a specific user interface.

The inventions are distinct, each from the other because of the following reasons:

The originally presented invention and inventions I, III, and IV are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the method of claim 11 may be performed without the particulars of a user interface. The originally presented invention merely requires receiving information from a seller.

The originally presented invention and invention II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, the originally presented invention has separate utility such as a host operating method where the seller participant's computer system already has a list of categories. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 18-34 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The amendment filed on 9/23/04 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because of the discussion above.

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Kramer whose telephone number is (703) 305-5241. The examiner can normally be reached on 8:00 to 5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from either Private PAIR or Public PAIR. Status information for published applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jak

Michael Cuff 12/27/04

**MICHAEL CUFF
PRIMARY EXAMINER**